

Zoning Board of Appeals  
Minutes  
November 1, 2021

A meeting of the Zoning Board of Appeals (ZBA) was held in person and via the Zoom Web Conferencing Service on November 1, 2021 at 7:30 pm.

Present: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore  
Associate Members: Leonard Golder and Michael Naill

Absent: Associate Member Ruth Sudduth

The Meeting was called to order at 7:30 pm

**News/Views**

Chairman Mark Jones updated the Board on litigation cases:

- Collings Foundation – The Board of Selectmen and Zoning Board of Appeals entered into a Settlement Agreement
- Fisher/Presti – Land Court found that the Fisher did not timely appeal the Building Commissioner's Decision. The Appeals court found that the appeal was timely and vacated the untimely appeal judgement and remanded the remainder of the case back to Land Court.

**Minutes**

*October 4, 2021*

***Andrew DeMore moved to approve minutes of the October 4, 2021 meeting as amended. The motion was seconded by Ernest Dodd and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew Demore).***

**Public Hearing Continuance - 206 Barton Road Volume III, Page 848 and 849**

Present:

Michael and Paige Lombardi, Applicants

Tim Hess, InSitu Architects, representing the Applicants

Tim Hess reviewed updated plans, submitted on October 26, 2021, which include models to illustrate and demonstrate the relationship to neighbors' homes. They feel the design is fitting to the neighborhood.

- Building Height – The elevation at the largest portion of the gable roof, as measured from the mean point, is 32.5 feet. The flat roof portion of the building is below 32.5 feet.
- The proposed dwelling is taller at the lake side and about 5.5 feet higher than the house on the southerly side and more significantly higher than the neighboring house on the north. These measurements were based on a rule of thumb. They did not use a transit.

Leonard Golder questioned if all portions of the building are under 35 feet. Tim Hess responded yes.

Tim Hess said that the septic passed Title 5 and the well passed relevant tests. He had a conversation with Kaileen, Stow Health Agent from Nashoba Boards of Health. She went through a series of questions to determine the room count. She represented that the preliminary plan presented would meet requirements and when it comes time for review of the final plan it will be reviewed in more detail. She did ask about specific fixtures such as a

sewage ejector pump and was interested in hearing if there will be a garbage disposal and other type fixtures that would have the capacity to affect the flow rate.

Tim Hess said he spent time with Stow Conservation Director Kathy Sferra and Assistant Jacquie Goring last week. That conversation focused on strategy for stormwater and rainwater and mitigation along the waterfront - primarily with the 35-foot buffer zone. They are aware they have to deal with that and will get to it as soon as they are able.

William Byron said it looks like a shed will be located between the house and carport. He thought that area was to be green. Tim Hess said that area is intended to include both the shed and green area. It is a small shed planned for the end of the carport. It is a rather shallow shed (10-foot by 4-foot) to be located in the space between the house and the car port, separated by 16 feet of greenspace plantings (not grass).

Davie Hartnagel asked for confirmation that the only variance required is for the car port. Members noted that the existing side yard setbacks are non-conforming therefore they are subject to a special Permit for modification or expansion of a pre-existing non-conforming setback. The variance is required from the front yard setback for the car port as there is no pre-existing condition as to front yard setbacks.

Ernest Dodd asked if the applicant is comfortable with the informal conversation with Conservation Commission staff that there will be no need to change the footprint of the building. Tim Hess said he knows the Conservation Commission is interested in things in the 35-foot no build zone. There may be an evolution of the landscape plan but not the building location.

Ernest Dodd said there will be an increase in runoff from the car port and suggested they may want plans to accommodate the increase. Tim Hess said they have a landscape model that represents those concerns. Ernest Dodd said the reason he asked is because if the public hearing is closed tonight and the plan changes, you might have to come back with a new filing.

Tim Hess pointed out the foreground view of the car port where they propose a permeable ground surface. The existing asphalt would be replaced with pea gravel, turf, paver blocks or another type of permeable surface. They are currently looking at a green roof for the carport. If that is possible, they will not install a permeable ground surface.

Tim Hess noted there is a small rain garden in the area where the shed is located. They have a relatively robust plan to manage water.

Ernest Dodd said they should be aware there is a potential that they might have to come back with a new filing if the Conservation Commission or Board of Health require a plan change. Tim Hess said he doesn't see that as a big risk. Mark Jones explained that if the hearing is closed and they have to come back with a plan modification it would take longer because it would require a new application and public hearing. If this hearing is continued it would allow a continued discussion without waiting for the procedural notifications.

Tim Hess said he understands a Special Permit Decision would relate directly to the building and not the landscaping. If the landscape is changed, it would not alter the decision of the Zoning Board of Appeals. Mark Jones said probably not, but here was an occasion where the Board of Health required the septic location to change which resulted in relocation of the structure. He said the Board is trying to help with expediency. Leonard Golder said if the hearing is continued it would preserve the opportunity to adjust the plan without a new filing.

Andy DeMore said if there were to be issues with other boards resulting in the need to move the building, that could create an issue in terms of time. He is not sure how likely that would be.

Tim Hess noted that the Title V and well inspections were done in 2021 in preparation for their meeting with the Board of Health.

Mark Jones asked about the change from the current driveway bituminous pavement. Tim Hess said the intent is address the driveway through one or two strategies. If they do a green roof, they will not change the surface below. If they don't go with the green roof or don't have approval for the car port, they would try to do as much absorption through pervious materials. Mark Jones asked if Conservation Staff suggested installing drywells. Tim Hess said the plan proposes a rain garden on the north and possible a drywell on the south. They will gutter the roof to have more control as to where things go.

Mark Jones asked Board members their thoughts about the variance request for the car port. Ernest Dodd said there are various garages along Barton Road. Some are close to the road, and some are not. Because this is a small lot, and the car port would go beyond the footprint of the house and will result in most of the lot being covered. If granted he would suggest a condition that it not be enclosed.

William Byron noted, as you face the structure from the street, there appears to be a raised walkway. Tim Hess said it is a boardwalk intended to be a rainwater strategy to reduce the impervious surface. The roof does not extend over the walkway.

William Byron noted the house to the left is very small.

Mark Jones said the Board, in granting a variance, the Board must find that it the lot is strangely shaped, or the topography or geology is strange as compared to the neighbors.

Ernest Dodd said that structures around Lake Boon have changed over the years. The small cottages have grown bigger and bigger over the years. This proposal is consistent with those changes. He said this lot is unique in that it is a very small 5,000 sq. ft. lot.

Andrew DeMore said the proposed car port is open and he would want to be sure it is not enclosed. He noted that the car port is a matter of convenience, but he thinks it fits into the environment. He thinks it was done nicely and looks good.

Leonard Golder said it does seem to be in conformity with garages in the neighborhood. It has topographical constraints. He thinks it would meet the criteria for a variance.

Ernest Dodd said he thinks it is difficult to fit the criteria for a variance.

David Hartnagel noted that the size of the lot does not apply to the required finding that the lot is uniquely shaped.

Tim Hess asked about the difference in from shape vs. size. Mark Jones said there is case law. An example of lot shape is when you can't locate any structure because of the shape such as a very narrow or triangular shaped lot.

David Hartnagel said you could make the argument that the shape of lot is justified due to the setback requirements from the lake, the slope of the lot and there is no room on the side. He questioned how much of a factor should the board place on the structure is more a matter of

convenience. Len Golder said it could be considered a necessity for protection of vehicles and residents

Tim Hess responded to the question of necessity. He said in designing the building, they struggled between identity of the lake area as summer cottages that are more and more becoming year-round homes. They wanted the design to be something authentic in terms how building stock has evolved. He feels they did respectful job to offer shelter to take edge off from elements to enter the house with the design for an open car port.

Tim Hess said the Applicant would not object to a condition that car port shall not be enclosed.

#### **Abutters comments**

Dan Barstow, abutter, Lake Boon Commission Member and Lake Boon Association Member, thanked the Board for taking the time to ensure the health of the lake is taken care of. He appreciates that the time was taken to talk to the Conservation Commission.

Tim Hess said the Applicant requests that the hearing be closed this evening.

Mark Jones asked if members feel they have sufficient information to render a decision. William Byron noted that the abutter has not come forward. It was noted that one of the abutters was present at the first session of hearing and voiced support for the proposal. Tim Hess said the closest proximity to north boundary is on the east side of the patio. If they move west along that line back to the carport the setback should match. It was noted that it appears to be closer on the western side of the property.

Members all agreed that sufficient information has been submitted to close the hearing and render a decision.

***Ernest Dodd moved to close the public hearing. The motion was seconded by Andrew DeMore and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).***

#### **Villages at Stow – Request to release Performance Bond.**

George Gallagher of Habitech Communities LLC met with the Board to discuss a request to release the Performance Bond for the Villages at Stow.

Karen Kelleher noted that the Board previously held back \$20,000.00 until such time the final Cost Certification is completed and submitted to the Board. The Cost Certification has since been completed and submitted.

Mark Jones said that he was not pleased with the time that took to complete the Cost Certification. George Gallagher said they understand the importance of it being done quickly. One of the issues causing the delay was that the invoices were disposed of by a previous accountant.

***Ernest Dodd moved to release the final bond amount of \$20,000.00 for the Villages at Stow Comprehensive Permit. The motion was seconded by David Hartnagel and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).***

### **Public Hearing - 36 Crescent Street - Volume III, Page 845**

Members Participating in the Public Hearing: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

The Public Hearing to consider an Application for Special Permit to allow construction of a deck on a pre-existing, non-conforming lot at 36 Crescent Street was called to order with the Chair reading the notice of public hearing.

Reed Sisson of Platt Builders Inc., representing the owner, explained that they plan to take an existing small deck and build a larger footprint deck. When they filed for a building permit, they found that they needed a Special Permit. The application includes an old plot plan for the house with the proposed deck marked and setbacks noted.

Mark Jones noted the sole reason for the Special Permit is due to the lot size and he understands there a no setback infringements.

There were no abutter comments.

Ernest Dodd said he has no issues with the proposed construction. The proposed deck meets the property line setbacks and creates no new nonconformities.

William Byron noted that the framework was started. Reed Sisson responded that they did start construction because they thought they had a green light. He was a bit to eager to get started. They halted construction when they found they need a Special Permit.

Leonard Golder and David Hartnagel said they have no concerns.

***Andrew DeMore moved to close the public hearing. The motion was seconded by Ernest Dodd and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).***

### **Deliberations – 36 Crescent Street**

Members reviewed a draft decision.

***Ernest Dodd moved to grant the Special Permit for 36 Crescent Street and approved the decision as drafted. The motion was seconded by Andrew DeMore and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).***

### **Public Hearing Continuance - 51 Hale Road – Volume III, Page 846 and 847**

Members Participating in the Public Hearing: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

The Public Hearing continuance from September 20, 2021 and October 4, 2021 was called to order. Mark Jones noted that the Applicant requested that the Public Hearing be continued without testimony to January 3, 2022 to allow time to prepare for the hearing.

***Ernest Dodd moved to continue the Public Hearing to January 3, 2022 at 7:40 pm. The motion was seconded by Andrew DeMore and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).***

**Public Hearing - 99 Pine Point Road - Volume III, Page 850**

Members Participating in the Public Hearing: Mark Jones, Ernest Dodd, David Hartnagel and Andrew DeMore and Associate Member Leonard Golder.

William Byron recused himself from sitting on this hearing to avoid the appearance of a conflict of interest. Chairman Mark Jones appointed Associate Member Leonard Golder to be Acting Voting Member on this Public Hearing.

The Public Hearing to consider an Application for Special Permit to construct a shed on a pre-existing nonconforming lot at 99 Pine Point Road was called to order with the Chair reading the Notice of Public Hearing.

Dan and Eva Barstow, Applicants were present.

Dan Barstow explained that they want to install a pre-built shed 10-feet from the property line abutting 104 Pine Point Road property. The house for 104 Pine point Road is on the opposite side of the road.

Dan Barstow reviewed the plot map submitted with the application indicating their home is already non-compliant in that it is located 17 feet from the property line. The proposed 10'x14' shed is proposed to be 10 feet from the property line. The shed will be built on a gravel bed with cement corner stones. He reviewed a mockup to depict the shed as seen from the 104 Barton Road neighbor. He noted the abutter has no objection.

Leonard Golder noted another structure on the mockup plan. Dan Barstow said the other structure is his home.

Leonard Golder asked why the application is for a special permit and not a variance. It was noted that because there is already a setback encroachment the proper permit would be a Special Permit for extension of an existing nonconformity rather than a variance.

Andrew DeMore asked about the 104 Pine Point Road property. Dan Barstow explained that it is owned in common with the home across the street.

Andrew DeMore asked if there is a reason he didn't want to move closer to the other property line. Dan Barstow said they wanted to keep some distance and there are trees that they don't want to cut down.

Ernest Dodd said the proposal seems reasonable. He has no problem with the request.

Dorothy Spaulding, 104 Pine Point Road, explained that she owns the abutting property and would like to build a garage on that parcel sometime in the future. This proposal would not have any impact on what she would want to do.

Leonard Golder said it seems this is an extension of a pre-existing nonconforming setback and there are no abutter objections.

***Ernest Dodd moved to close the Public Hearing. The motion was seconded by Andrew DeMore and carried by a unanimous roll call vote in favor (Mark Jones, Ernest Dodd, David Hartnagel and Andrew DeMore and Associate Member Leonard Golder).***

Members reviewed the Draft Decision and noted the member participation list should be amended.

## **Deliberations – 99 Pine Point Road**

Members reviewed a draft decision.

***Ernest Dodd moved to GRANT the Special Permit for 99 Pine Point Road and approve the draft decision as amended. The motion was seconded by Andrew DeMore and carried by a unanimous roll call vote in favor (Mark Jones, Ernest Dodd, David Hartnagel and Andrew DeMore and Associate Member Leonard Golder).***

## **Policy Discussion - Associate Member participation in Executive Session**

Leonard Golder said he requested this discussion be placed on the agenda. It relates back to an incident when he was barred from participation in an executive session meeting with the Select Board as an Associate Member. He was surprised because it has always been this Board's policy to that Associate Members participate in all meetings. When he asked the reason why he could not participate the only reason he got back was it was to be a small meeting. He noted there were other members that were not present. He feels the answer was arbitrary and capricious. He was upset he was barred from the meeting and disappointed that other ZBA members didn't say anything. As a matter of policy, he would think that other Board Members would have something to say.

Mark Jones said he was delegated as an organizer and the ZBA members present were at the courtesy of the Select Board. Their invitation was limited to full members. It was really the Select Board's meeting.

Leonard Golder said he knows it didn't originate from this Board. He is not even sure if it was from the Select Board. As a matter of policy, he would think all would be invited. There should be some rationale to determine who is invited to participate.

Mark Jones said the meeting was announced as an executive session for the ZBA by the Select Board. Although ZBA members were there by invitation, the ZBA was not in control of that meeting. It was the Select Board's call as to who could participate.

Leonard noted again that the Select Board's position was arbitrary and capricious. He got the impression that the attorney was acquiescing to the Select Board's position. He said the same issue came up a couple of weeks earlier and the chair of that meeting didn't deal with the issue. He didn't get the impression that the position was generated by Town Counsel. Leonard Golder said the decision didn't have any rational basis. He would have the same position if this involved someone other than himself.

Mark Jones said, as to ZBA meetings, he wants everyone to have an opportunity to participate so they can understand the issues and gain experience. Leonard Golder agrees and is happy to hear that.

William Byron said that if an Associate Member were involved in the hearings on the subject matter, it might be different. He doesn't think Leonard Golder was involved in those hearings. Leonard Golder said he was involved in the Planning Board meetings on this matter. William Byron said he understands but Planning Board hearings were about a different matter.

## **Policy Discussion - Voting Member Appointments**

Leonard Golder said, based on seniority, he feels that he should have a place as a voting member at some point. Ideally, as in the past, he thinks it is good to maintain a vacancy on the board in order for Associate Members to gain experience. If that policy does not continue, he feels he should be appointed as a full member. He said he sent a letter of interest back in June to the Town Administrator and the Select Board and never heard back.

Andrew Demore said he understands that the new Town Administrator wants to have all vacancies filled.

Mark Jones said, according to the Charter, the Town Administrator makes recommendation to the Select Board. The Town Administrator is basically the gate keeper. He thinks that the letter is held up on her desk. Leonard Golder said the Select Board should make the decision. He is not sure why he wouldn't get the recommendation. Mark Jones said the Select Board, as the appointing authority, have complete control of the process. It is their decision as to how to deal with it.

### **206 Barton Road Deliberations**

Members agreed to schedule an extra meeting to deliberate on the Decisions for 206 Barton Road on November 8, 2021 at 6:30 pm.

Ernest Dodd said an in-person meeting is desirable because it is easier to have documents on the table to review. Most members are available to meet in person. It was agreed to hold the meeting in person and via zoom to allow all members and spectators to be present.

### **Andrew Crosby – Interested in appointment to the ZBA**

Andrew Crosby introduced himself and advised that he is interested in being appointed to the ZBA. He said Karen Kelleher advised that he attend a meeting to get a better idea of the Board's charge before submitting a formal application. After sitting through this evening's meeting, he is still interested.

Members asked if he is interested in appointment as a full member or associate member, he noted that he was interested in the full member vacancy. Members advised that it is typical that one serves as an associate member first in order to gain experience.

### **Interpretation of extension of a property line setback nonconformity as a special permit vs. variance.**

Bill Byron said he doesn't think the Board's interpretation of an extension to a nonconformity as a special permit applies to new construction. He feels that situation should only apply to expansion of an existing nonconforming structure.

### **Adjournment**

***At 9:45 pm, Andrew DeMore moved to adjourn the meeting the motion was seconded by Ernest Dodd and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).***

Respectfully submitted,

Karen Kelleher